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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Ariana Caparelli,

10 Plaintiff,

11 v.

12 Alan H Zimmerman PC and U.S.  
13 Collections West Incorporated,

14 Defendants.

No. CV-18-02281-PHX-ROS

**ORDER**

15 Plaintiff Ariana Caparelli (“Caparelli”) alleges Defendants U.S. Collections West  
16 (“USCW”) and Alan H. Zimmerman PC (“Zimmerman,” and collectively with USCW,  
17 “Defendants”) violated the Fair Debt Collections Practices Act (“FDCPA”). Plaintiff  
18 alleges that Defendants, as debt collectors, failed to effectively communicate the identity  
19 of her creditor and used false, deceptive, or misleading representations in connection with  
20 a debt. For the reasons set forth, Defendants’ motion to dismiss for failure to state a  
21 claim is denied.

22 **BACKGROUND**

23 In support of her FDCPA claims, Caparelli’s Amended Complaint alleges the  
24 following:

25 Caparelli leased an apartment from Casa Santa Fe Apartments in Arizona. (Doc.  
26 16 at 5.) Some time before January 2018, Caparelli apparently failed to make timely  
27 payments to Casa Santa Fe Apartments. (Doc. 16-3 at 2.)

28 Caparelli received a letter from USCW, a collection agency, dated January 12,

1 2018. (Doc. 16 at 6.) The letter stated it was regarding Casa Santa Fe Apartments and  
2 that it was from a debt collector. (Doc. 16-2 at 2.) The letter further stated: “You have  
3 not responded to previous correspondence regarding the account shown above. You must  
4 make amicable arrangements for payment in full, or we will proceed against you under  
5 the guidelines of the Fair Debt Collections Practices Act.” (Doc. 16-2 at 2.) According  
6 to the letter, Caparelli owed \$2715.46. (Doc. 16-2 at 2.) The letter advised: “This  
7 communication is from a debt collector. This is an attempt to collect a debt. Any  
8 information obtained will be used for that purpose.” (Doc. 16-2 at 2.) Upon receipt of  
9 the letter, Caparelli claims she disputed the debt, without identifying how it was  
10 accomplished. (Doc. 16 at 6.)

11 In February 2018, Caparelli received another letter from USCW. (Doc. 16-3 at 2.)  
12 This letter also referenced Casa Santa Fe Apartments and contained a handwritten note  
13 under the category “response from the above mentioned creditor.” (Doc. 16-3 at 2.)  
14 Creditor Casa Santa Fe Apartments stated: “Resident did not [fulfill] lease agreement and  
15 was informed of charges for leaving early.” (Doc. 16-3 at 2.) The letter also informed  
16 Caparelli to respond by faxing or mailing USCW within 15 days. (Doc. 16-3 at 2.)

17 Caparelli received a third letter, this time from Zimmerman, dated March 27,  
18 2018. (Doc. 16-1 at 2.) Caparelli alleges this letter “was Zimmerman’s initial  
19 communication with [her] with respect to the Debt.” (Doc. 16 at 5.) The subject line  
20 was: “Re: \$3,829.63 Balance owed to U.S. Collections West, Inc. for debt incurred with  
21 Casa Santa Fe Apartments.” (Doc. 16-1 at 2.) This letter also stated it was from a debt  
22 collector. (Doc. 16-1 at 2.) It advised: “In the event that you choose to ignore this  
23 request, this office has been authorized to take any and all actions necessary to collect the  
24 full amount due.” (Doc. 16-1 at 2.) In addition, it informed Caparelli to contact USCW  
25 to discuss paying the account or to dispute the validity of the debt. (Doc. 16-1 at 2.)

26 Following the March 2018 letter, Caparelli received additional correspondence  
27 from USCW. In April 2018, a letter from USCW stated: “Previously you advised our  
28 office of your dispute and or a request for validation of our clients [sic] claim against

1 you. We previously provided you with the documentation provided by our client to  
2 validate their claims.” (Doc. 16-4 at 2.) USCW also sent Caparelli a proposed  
3 promissory note dated April 27, 2018. The promissory note stated: “Client: Casa Santa  
4 Fe Apts.” (Doc. 16-5 at 2.) It indicated that Caparelli owed \$3829.63 but proposed a  
5 settlement amount of \$2700.00. (Doc. 16-5 at 2.)

6 On July 19, 2018, Caparelli filed a complaint against Zimmerman and USCW.  
7 (Doc. 1.) Caparelli alleges the letter dated March 27, 2018 (“the Letter”), sent by  
8 Zimmerman on behalf of USCW, violated §§ 1692g(a)(2) and 1692e of the FDCPA  
9 because it failed to “meaningfully convey to [Caparelli] the name of the creditor to whom  
10 the alleged debt is owed” and falsely represented the identity of the creditor. (Doc. 16 at  
11 11–16.) According to Caparelli, the current creditor was Casa Santa Fe Apartments. The  
12 Letter, however, implied that USCW was the current creditor. (Doc. 16 at 6.)  
13 Zimmerman filed a motion to dismiss Caparelli’s amended complaint, (Doc. 18), which  
14 USCW joined. (Doc. 20.)

### 15 LEGAL STANDARD

16 To survive a motion to dismiss, the plaintiff’s complaint must “contain sufficient  
17 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’”  
18 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550  
19 U.S. 544, 570 (2007)). Rule 8 of the Federal Rules of Civil Procedure requires a “short  
20 and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R.  
21 Civ. P. 8(a)(2). “[T]he pleading standard Rule 8 announces does not require ‘detailed  
22 factual allegations,’ but it demands more than an unadorned, the-defendant-unlawfully-  
23 harmed-me accusation.” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555).

### 24 ANALYSIS

25 “To prevail on a FDCPA claim, a plaintiff must sufficiently allege that (1) he was  
26 the object of collection activity arising from a consumer debt as defined by the FDCPA;  
27 (2) the defendant is a debt collector as defined by the FDCPA; and (3) the defendant  
28 engaged in an act or omission prohibited by the FDCPA.” *Hamilton v. Tiffany & Bosco*

1 PA, No. CV-14-00708-PHX-GMS, 2015 WL 11120694, at (D. Ariz. Feb. 10, 2015),  
2 *aff'd*, 713 F. App'x 674 (9th Cir. 2018). Here, only the third factor is under dispute.

3 The FDCPA was enacted to “prohibit debt collectors from engaging in various  
4 abusive and unfair practices,” including abusive debt collection practices. *McCollough v.*  
5 *Johnson, Rodenburg & Lauinger, LLC*, 637 F.3d 939, 947–48 (9th Cir. 2011).  
6 Specifically, § 1692g(a)(2) provides: “[A] debt collector shall, unless the following  
7 information is contained in the initial communication or the consumer has paid the debt,  
8 send the consumer a written notice containing . . . the name of the creditor to whom the  
9 debt is owed.” 15 U.S.C. § 1692g(a)(2). § 1692e forbids “any false, deceptive, or  
10 misleading representation or means in connection with the collection of any debt.” 15  
11 U.S.C. § 1692e.

12 The Ninth Circuit has adopted the “least sophisticated consumer” standard to  
13 evaluate violations of the FDCPA. *Gonzales v. Arrow Fin. Servs., LLC*, 660 F.3d 1055,  
14 1061 (9th Cir. 2011). Under this standard, “[a]n FDCPA Plaintiff need not even have  
15 actually been misled or deceived by the debt collector’s representation; instead, liability  
16 depends on whether the *hypothetical* ‘least sophisticated debtor’ likely would be misled.”  
17 *Tourgeman v. Collins Fin. Servs., Inc.*, 755 F.3d 1109, 1117–18 (9th Cir. 2014). The  
18 “least sophisticated consumer” standard is lower than a “reasonable consumer” standard.  
19 *Gonzales*, 660 F.3d at 1061. The Ninth Circuit has instructed: “The standard is ‘designed  
20 to protect consumers of below average sophistication or intelligence,’ or those who are  
21 ‘uninformed or naïve,’ particularly when those individuals are targeted by debt  
22 collectors.” *Id.* at 1062. Due to the remedial nature of the statute, courts interpret the  
23 FDCPA liberally in favor of the consumer. *Clark v. Capital Credit & Collection Servs.,*  
24 *Inc.*, 460 F.3d 1162, 1176 (9th Cir. 2006).

25 Caparelli alleges the Letter violated the FDCPA because it did not accurately state  
26 the identity of the creditor. The Letter stated: “Re: \$3,829.63 Balance owed to U.S.  
27 Collections West, Inc. for debt incurred with Casa Santa Fe Apartments.” (Doc. 16-1 at  
28 2.) Caparelli alleges this statement was inaccurate and deceptive as to the identity of the

1 creditor because it “leaves the consumer guessing whether the original creditor, Casa  
2 Santa Fe Apartments, is still the current creditor, or whether the Debt has been transferred  
3 to U.S. Collections West, Inc.” (Doc. 16 at 6.) According to the Amended Complaint, at  
4 the time Caparelli received the Letter, the current creditor was Casa Santa Fe Apartments,  
5 not USCW. (Doc. 16 at 6.) Caparelli further argues that her “communications with both  
6 [USCW] and Casa Santa Fe Apartments support her allegation that Casa Santa Fe  
7 Apartments—not [USCW]—was her creditor.” (Doc. 22 at 9.) For example, USCW’s  
8 correspondences with Caparelli—both before and after the Letter—explicitly and  
9 implicitly indicated that Casa Santa Fe Apartments was the creditor. (Doc. 16 at 7.)

10 Defendants, on the other hand, argue the Letter was wholly accurate because it  
11 “clearly and prominently contained information regarding both the identity of the original  
12 creditor and the creditor to whom the debt is owed, even to the least sophisticated  
13 consumer.” (Doc. 18 at 2.) According to Defendants, at the time Caparelli received the  
14 Letter, Casa Santa Fe Apartments was the original creditor and USCW was the current  
15 creditor to whom debt was owed. (Doc. 18 at 7.) In their Reply, Defendants argue for  
16 the first time that Casa Santa Fe Apartments assigned its debt to USCW, and attach an  
17 exhibit, dated February 15, 2018, purporting to show the assignment. (Doc. 23-1 at 2.)  
18 Defendants further argue that Caparelli “knew” the debt was assigned to USCW because  
19 she received communications from USCW and contacted USCW to negotiate and/or pay  
20 the debt. (Doc. 23 at 3.)

21 Defendants’ argument is incorrect. On a motion to dismiss, the Court accepts  
22 Caparelli’s factual allegations as truth and views her complaint in the light most  
23 favorable to her. *See, e.g., Johnson v. Riverside Healthcare Sys.*, 534 F.3d 1116, 1122  
24 (9th Cir. 2008). Caparelli has alleged sufficient facts supporting that Casa Santa Fe  
25 Apartments, not USCW, was the creditor at the time she received the Letter. Caparelli  
26 alleges the debt arose out of a lease agreement with Casa Santa Fe Apartments and that  
27 various correspondences with USCW had identified Casa Santa Fe Apartments as “the  
28 creditor” or USCW’s “client.” (Docs. 16-3 at 2, 16-4 at 2.) Even if Casa Santa Fe

1 Apartments assigned the debt to USCW, the assignment of debt for the purpose of debt  
2 collection does not alone convert a credit collection agency into a creditor. The FDCPA  
3 explicitly instructs: “The term ‘creditor’ . . . does not include any person to the extent that  
4 he receives an assignment or transfer of a debt in default solely for the purpose of  
5 facilitating collection of such debt for another.” 15 U.S.C. § 1692a(4). In any event,  
6 Defendants’ argument and new evidence regarding the alleged debt assignment were  
7 raised for the first time in their Reply and will not be considered on this motion to  
8 dismiss. *See, e.g., Zamani v. Carnes*, 491 F.3d 990, 996 (9th Cir. 2007) (“The district  
9 court need not consider arguments raised for the first time in a reply brief.”).

10 Caparelli sufficiently states a claim that Defendants violated the FDCPA’s  
11 requirement that the debt collector communicate to the consumer “the name of the  
12 creditor to whom the debt is owed.” 15 U.S.C. § 1692g(a). Under §1692g(a), “[m]erely  
13 including the current creditor’s name in a debt collection letter, without more, is  
14 insufficient.” *Dix v. Nat’l Credit Sys.*, No. 2:16-cv-3257-HRH, 2017 WL 4865259, at \*2  
15 (D. Ariz. Oct. 27, 2017). Rather, the correspondence must effectively communicate the  
16 identity of the creditor—viewed from the perspective of the least sophisticated consumer.  
17 *See, e.g., Youssofi v. CMRE Fin. Servs., Inc.*, No. 15CV2310 JM(WVG), 2016 WL  
18 4098312, at \*3 (S.D.Cal. Aug. 2, 2016). Here, considering allegations in the Amended  
19 Complaint, the Letter failed to effectively convey the identity of the creditor because it  
20 identified two parties who could potentially be creditors: “Balance owed to U.S.  
21 Collections West, Inc. for debt incurred with Casa Santa Fe Apartments.” (Doc. 16-1 at  
22 2.) Because the Letter did not state whether USCW or Casa Santa Fe Apartments was the  
23 creditor, and the language of the Letter was ambiguous as to the identity of the current  
24 creditor, the least sophisticated consumer would find herself “obliged to guess who  
25 currently owned the debts in question.” *Janetos v. Fulton Friedman & Gullace, LLP*, 825  
26 F.3d 317, 323 (7th Cir. 2016) (holding that a letter containing language about the  
27 “transfer” and assignment of an account was ambiguous and violated § 1692g(a)).  
28 Indeed, Defendants argue the Letter communicated that Casa Santa Fe Apartments was

1 the “original creditor” and USCW was the “current creditor.” (Doc. 18 at 2.) To the  
2 extent that Casa Santa Fe Apartments—not USCW—was the creditor, the Letter did not  
3 adequately identify the creditor under § 1692g(a).

4 Caparelli also sufficiently states a claim that Defendants violated § 1692e of the  
5 FDCPA, which prohibits the use of “any false, deceptive, or misleading representation or  
6 means in connection with the collection of any debt.” 15 U.S.C. § 1692e. The Ninth  
7 Circuit has instructed that any false or misleading representations must be material in  
8 order to be actionable under § 1692e. *Tourgeman v. Collins Fin. Servs., Inc.*, 755 F.3d  
9 1109, 1119 (9th Cir. 2014). “[I]t is well established that ‘[a] debt collection letter is  
10 deceptive where it can be reasonably read to have two or more different meanings, one of  
11 which is inaccurate.’” *Gonzales v. Arrow Fin. Servs., LLC*, 660 F.3d 1055, 1062 (9th Cir.  
12 2011). To the least sophisticated consumer, “a literally true statement can still be  
13 misleading.” *Id.* at 1062. As discussed above, the language of the Letter is ambiguous as  
14 to the identity of the creditor and can be reasonably read to have more than one meaning.  
15 In addition, the identity of the creditor is material here because it “may frustrate a  
16 consumer’s ability to intelligently choose his or her response.” *See Tourgeman*, 755 F.3d  
17 at 1120. In *Tourgeman*, the Ninth Circuit held that “in the context of debt collection, the  
18 identity of a consumer’s original creditor is a critical piece of information” and any  
19 factual errors could “easily cause the least sophisticated debtor to suffer a disadvantage in  
20 charting a course of action in response to the collection effort.” *Id.* at 1121. Here,  
21 misleading language about the identity of the creditor could have frustrated Caparelli’s  
22 efforts to negotiate or settle the debt with her creditor.

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1 Accordingly,

2 **IT IS ORDERED** Defendants' Motion to Dismiss (Doc. 18) is **DENIED**.

3 **IT IS FURTHER ORDERED** the filing of Plaintiff's Amended Complaint  
4 rendered as moot Defendants' previous Motion to Dismiss (Doc. 12).

5 **IT IS FURTHER ORDERED** Defendants' Motion to Dismiss (Doc. 12) is  
6 **DENIED** as moot.

7 Dated this 28th day of November, 2018.

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11 Honorable Roslyn O. Silver  
12 Senior United States District Judge  
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